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Honorable Bob Bush
Chairman
Committee on Judiciary
Texas House of Representatives
P. O. Box 2910
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Opinion No. JM-535

Re: Whether the legislature may
authorize a particular municipality
to impose additional court costs on
convictions

Dear Representative Bush:

As chairman of the House of Representatives' Committee on
Judiciary you ask:

May the legislature, without violating the
state or federal constitution, authorize a
particular city to impose an additional court cost
on a conviction in municipal court?

We assume that you refer to legislation which would apply to one
particular municipality. You do not indicate which provisions of the
state or federal constitution concern you.

Your question implicates one provision of the Texas Constitution
in particular. Article III, section 56, of the Texas Constitution
states that "[t]he Legislature shall not, except as otherwise provided
in this Constitution, pass any local or special law" on certain
enumerated subjects. These subjects include "[r]egulating the affairs
of . . . cities. . . ." Accordingly, we must determine whether the
proposed act is a "local or special law" and whether it falls within a
constitutional exception from section 56.

The proposed legislation relates not just to the affairs of a
particular city but to the city's municipal courts. The Texas
Constitution contains an exception to section 56 for the creation of
certain courts and for the prescription of their jurisdiction and
organization. See Tex. Const. art. V, §§1, 7, 22; Tom Green County v.
Proffitt, 195 S.W.2d 845 (Tex. Civ. App. - Austin 1946, no writ). The
court in Tom Green County upheld an act which dealt with salaries for
official court reporters but which exempted the courts in counties
falling within a certain population bracket. The court held that the
act was not controlled by article III, section 56, because the act

fell within article V, section 1, as a law affecting the organization of the courts. 195 S.W.2d at 847.

Nevertheless, we believe that the instant case extends beyond the creation, jurisdiction, and organization of the courts. You ask whether the legislature may grant a certain power to a particular city -- the power to impose additional court costs on municipal court convictions. The court in In re Johnson, 554 S.W.2d 775 (Tex. Civ. App. - Corpus Christi 1977), per curiam, case 1 writ ref'd n.r.e.; case 2 writ dism'd per curiam, 569 S.W.2d 882 (Tex. 1978), applied article III, section 56, to a statute which authorized court reporters to set their own fees, subject to the approval of the court. Although this statute applied to an aspect of the functioning of the courts, the court struck down the provision under article III, section 56:

Since the article is subject to unequal application to litigants due to the fact that the fee charged is subject to each individual court reporter's fee scale and the individual determination by each trial judge of what is a reasonable amount, the article is in violation of Art. III, §56 of the Texas Constitution.

554 S.W.2d at 785. Accordingly, we do not believe that the constitutional judiciary exceptions would save the proposed legislation.

Moreover, the proposed legislation would apply to only one city. Article III, section 56, does not prohibit all classifications which treat cities differently. For example, Texas courts have upheld a number of population bracket laws. See, e.g., Jones v. Alexander, 59 S.W.2d 1080 (Tex. Comm'n App. 1933). The vital test is whether the classification is reasonably related to the differences in circumstances that necessitate the classification. Applying article III, section 56, the court in Morris v. City of San Antonio, 572 S.W.2d 831, 833-34 (Tex. Civ. App. - Austin 1978, no writ) stated:

Not only must a classification be broad enough to include a substantial class based on characteristics legitimately distinguishing that class from others, but the legislation must be intended to apply uniformly to all municipalities that may in the future come within the classification designated. Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000 (1941). In a case decided ten years earlier than Miller the Supreme Court held a statute invalid as a local or special law and said, ' . . . the act is so constructed that it is absolutely impossible for any other city in the state to ever be included within the terms or

under the provisions of the act.' City of Fort Worth v. Bobbitt, 121 Tex. 14, 36 S.W.2d 470, 471 (1931).

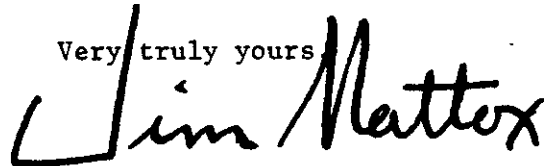
Your question involves a law which would, by its terms, apply to only one city.

Consequently, we conclude that article III, section 56, prohibits the Texas Legislature from enacting legislation which grants a particular city the authority to impose additional "court costs" on convictions in municipal courts. We make no comment on whether such a cost is correctly characterized as a court cost rather than as a fine. We note that this type of legislation may also implicate equal protection issues under the Fourteenth Amendment to the United States Constitution. Further, the Texas Code of Criminal Procedure contains various provisions which govern generally the fixing and collection of costs and fines in justice and corporation courts. See Tex. Code Crim. Proc. arts. 45.01 - 45.54.

S U M M A R Y

Article III, section 56, of the Texas Constitution prohibits the Texas Legislature from enacting legislation granting a particular city the authority to impose additional "court costs" on convictions in municipal courts.

Very truly yours,



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